

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

JASON MEIER,
1476 Shaker Run Boulevard
Lebanon, Ohio 45036

CASE NO.:

JUDGE

Plaintiff,

-VS-

DEPARTMENT OF VETERANS'
ADMINISTRATION
VETERANS' ADMINISTRATION
MEDICAL CENTER
50 Irving Street, N.W.
Washington, D.C. 20019

Served: Secretary of the Department of Veterans' Affairs
Affairs: Mr. Denis McDonough
810 Vermont Avenue, N.W.
Washington, D.C. 20420

Defendants.

COMPLAINT
(Jurisdiction and Venue)

1. Plaintiff, Jason Meier, ("Plaintiff") by counsel, files this complaint pursuant to the Federal Tort Claims Act ("FTCA") 28 U.S.C. § 2674.
2. Plaintiff is a citizen of the United States of America, residing in New Lebanon, Ohio.

3. Plaintiff has complied with 28 U.S.C. § 2675, and has exhausted his administrative remedies before filing this suit. Plaintiff received a denial of the claim, in writing, from the Department of Veterans Affairs, Office of General Counsel on August 3, 2021. (Please see copy of denial letter attached to the complaint as Attachment 1).
4. Venue properly lies in this Court pursuant to 28 U.S.C. § 1402(b) because the causes of action arose in the State of Ohio.

SUMMARY OF FACTS

5. Jason Meier is a veteran having served in the United States Marines, thus entitled to treat and the Veterans Administration Hospital System, and as Plaintiff is bringing this action.
6. Defendant, United States of America, Department of Veterans' Administration, Veteran' Administration Medical Center (the "Medical Center") is now, and at all times mentioned in this complaint was, a federal health care agency of the United States of America, located at 4100 West Third Street, Dayton, Ohio 45417.
7. On September 23, 2019, Plaintiff, Jason Meier, underwent surgery at the Dayton VA Medical Center in an area that was broad in its area of treatment, instead of the concentration to the calcaneal tubercle and the fascial as diagnosed for his condition Plantar Faciitis of the Right Foot.
8. The primary surgeon, Resident Podiatrist, Dr. Matthew Q. Dang, PGY -1, was assisted by Dr. Wendy Culp, DPM., during the procedure, wherein a CAM boot was applied to Plaintiff's right lower extremity, and scheduled him for a follow up within a week.

9. The Topaz procedure on September 23, 2019, had abnormal findings post-operatively, but Defendants failed to follow up with an NCV/EMG to assess the level of success of their surgery.
10. The following day, Dr. Wendy D. Culp, DPM issued an addendum as follows:
“Correction, tourniquet was placed on the patient, however it was not inflated.”
11. Plaintiff, on October 3, 2019, returned to the Dayton VA Medical Center complaining of severe pain in the right great toe as it became red, swollen, and ‘very painful over the past several days.’
12. The diagnoses on October 3, 2019, found the conditions: “1) First metatarsal head small chronic osteochondral lesion. Unchanged. 2) Mild forefoot dorsal soft tissue swelling new from September 23, 2019. 3) Chronic ossification at Lisfranc ligament region; possible prior injury. Chronic type II os navicularis with degenerative change. Small plantar calcaneal spurring.”
13. Plaintiff revisited the Dayton VA Medical Center on November 5, 2019, for continued pain, and discussion occurred doing an open plantar fasciotomy or endoscopic plantar fascial release if the pain is no better.
14. On December 5, 2019, a medical resident at Dayton VA Medical Center evaluated Plaintiff for complaints of chronic numbness between his toes and ball of his feet.
15. The medical resident found the numbness at the MTP joint right foot, which he claims is not related to the foot surgery, but recommended orthotics and Medrol depots.

16. During the January 28, 2020, the Dayton VA Medical Center medical resident found Plaintiff had *nerve pain* in the right foot, and told it would take up to a year before recovery.
17. On June 3, 2020 Plaintiff called the Dayton VA Medical Center to again complained of numbness of his toes feeling like “wooden pegs to his right foot starting in the ball of his foot and extending from the inside of his great toe to the outside of his baby toe.” Plaintiff wondered if he had permanent nerve damage.
18. On July 15, 2020, the Defendants noted during Plaintiff’s visit at the Dayton VA Medical Center that he continued to experience pain and ‘peg leg type feeling’ wherein an MRI demonstrated Schmorl nodes (Disc herniation) at T-12, L1, and L-2 with microtrauma at L-1, and mild foraminal narrowing at L3-4 and bulging disc at L5-S1.
19. Plaintiff, on February 3, 2021, the Dayton VA Medical Center following a lateral roll of his right ankle.
20. The X-ray found a “Plantar heel spur which is increased in size since March 7, 2019.” Plaintiff’s right heel pain remains, and now requires aggressive care with a specialist to correct the condition of the fail surgery.

FIRST CAUSE OF ACTION
(Negligence – Medical Malpractice)

21. Plaintiff has by incorporated, by reference, paragraphs 1 through 20 as though fully set forth has in, and further is alleges that the Dayton VA Medical Center undertook the care and treatment of Plaintiff, and his by agreed to exercise a reasonable degree of professional skill in treating him, including, but not limited

- to, the proper and appropriate monitoring, evaluating, diagnosing, assessing and treatment his condition.
22. On September 23, 2019, Plaintiff's surgery occurred at the VA Medical Center under the supervision of Dr. Matthew Q. Dang, PGY -1, for Plantar Faciitis of the Right Foot.
23. Dr. Dang's surgical procedure of Topaz (Radiofrequency Coblation) created Plaintiff's numbness to the treatment area, which caused neurolysis to the plantar branches of the Posterior Tibial Nerve as there was no presentation of numbness to the heel prior to the procedure.
24. The condition worsened over time, and as recent as February 3, 2021, exceeded the level of pain and injury prior to the surgery.
25. The physicians at the Dayton VA Medical Center had a duty to perform the surgical procedure on a concentrated area of the calcaneal tubercle and the fascial origin as diagnosed for plantar faciitis, rather than the broad treatment area.
26. The physicians at the Dayton VA Medical Center had a duty to follow up post-operatively with a NCV/EMG based upon Plaintiff's abnormal neurological presentation after surgery.
27. Dr. Dang and other physicians at the Dayton VA Medical Center breached the standards of medical care by failing to monitor the Plaintiff's condition for a follow up, failing to adequately treat the Plaintiff's Plantar Faciitis of the Right Foot condition.

28. Plaintiff, Jason Meier, returned to the Dayton VA Medical Center on numerous occasions regarding the Plantar Faciitis of the Right Foot condition had worsened “Plantar heel spur which is increased in size since March 7, 2019.”
29. The Dayton VA Medical Center physicians, including but not limited to, Dr. Dang, had a duty to perform a proper and adequate physical examination, a duty to administer appropriate test, and duty to perform adequate surgery, and a duty to act promptly to resolve Plaintiff’s Plantar Faciitis of the Right Foot condition.
30. The Dayton VA Medical Center physicians, including but not limited to, Dr. Dang, breached each and every one of said duties and departed from the standard of care.
31. Dr. Dang should have performed surgery in an adequate manner on September 23, 2019. His failure to diagnose breached the standard of good medical practice and directly and proximately caused Plaintiff to experience a plantar heel spur larger than March 2019, numbness, and continued pain in his right foot.
32. Dr. Dang and the Dayton Veterans’ Medical Center should have known that the Plaintiff’s condition has worsened, but failed to diagnose and properly treat the condition following the failed surgery. The failure to adequately treat Plaintiff’s condition is a breach the standard of good medical practice.
33. As a direct and proximate result of Defendant Medical Center’s deviation from the standard of care, Plaintiff suffered a plantar heel spur larger than March 2019, numbness, and continued pain in his right foot, thoracic, and low back areas.

WHISEFORE, plaintiff, Jason Meier, respectfully demands judgment against the United States of America in the full and just amount of Five-Hundred Thousand (\$500,000.00), Dollar plus interest and costs.

Respectfully Submitted,

/s/Aaron G. Durden

Aaron G. Durden, #0039862

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Trial Counsel for Plaintiff

Jury Demand

Plaintiff hereby demands that a jury of his peers hear all triable issues in this case.

/s/Aaron G. Durden

Aaron G. Durden, Esq.

Trial Counsel for Plaintiff